The World's Oldest Injustice: The Fight for Black Rights

Alyssa Dey

Diversity has emerged as the most talked-about topic in our day, generating debates in the fields of entertainment, business, and legislation. Yet, frequently, our justice systems overlook the appropriation of Black culture despites its importance in cultural preservation. Every creation is influenced by a certain type of inspiration, yet European manufacturers have long appropriated from ethnic cultures without responsibility or explicit regulations. This issue is seen not only through public debates but also through microaggressions, as social media platforms often normalize the "whitening" of cultural traditions, reinforcing the acceptance of cultural erasure. Proving that people of color have been long-time victims of this seemingly ceaseless cycle, but this is not widely recognized through our legal procedures which allows these cases to lose public volume and be swept under the table. Time and time again, the misappropriation of Black culture and art has been legally enabled through systemic loopholes and the underdevelopedness in copyright, trademark, and intellectual property laws which allows non-Black individuals and corporations to profit while original Black creators remain undercompensated, uncredited, and marginalized.

Cariou V. Prince is an often overlooked modern case regarding copyright despite containing the answer of what enables theft of black culture through our justice system: unpreparation. It is a simple way to say it but definitive enough. In *Cariou V. Prince*, the plaintiff sued the defendant within Gagosian Gallery for copyright infringement, claiming the defendant's artworks improperly used copyrighted photographs inspired by Rastafarians, snapped in Jamaica. The appellate court found the court applied the wrong fair use standard, as they initially ruled most of the defendant's works were fair use while remanding five for further review. Overall, it's

clear our justice system isn't developing fast enough to reach the ever evolving modern standards of diversity and cultural standards. Although these mistakes can be overruled, like this case, it's incredibly risky to rely on quick catches on these antiquated legal procedures. The district court's misapplication of fair use reflects a failure to grasp the broader principles of developing cultural art. This limited, old interpretation not only disregards the fluidity built into copyright law but also highlights a broader issue: the legal system struggles to adapt to modern cultural standards especially surrounding black and POC works.

At its core, this isn't only about fair use but also about how legal decisions can *reinforce* these outdated norms. Courts are often bound by precedent and usually reluctant to change, making them continue to apply rigorous frameworks that don't always account for the nuances of contemporary issues, whether it be in art, diversity, or intellectual property. While the appellate court corrected the error in the previously mentioned case, it's the fact that such a correction was even necessary that reveals a larger problem. There is no built-in mechanism or processor to update these laws that ensures courts consistently evolve alongside shifting cultural understandings. Instead, individuals are forced into legal battles to challenge outdated interpretations, making justice more reactive than proactive. This is proved continuously as these cases continue to spring up with no attention brought up with how they should not have this much frequency.

Another case is an instance with a British clothing retailer that had come under intense backlash for trademarking the name of the west African Yoruba people several years ago, which sparks the debate online about whether trademarking names of ethnic groups amounts to a form of cultural appropriation. In short, *it does*. Yoruba, as evidenced by a quick Google search, is not only an official language of Nigeria but is the name of a one-sixth subsector of Southwest Africa

(Yoruba People). According to the United States Patent and Trademark Office (USPTO), trademarks help customers identify your brand and set it apart from competitors while also indicating where companies' goods and services source from. It is worth considering that the clothing company in question was British, which already discredits the second claim. Regarding the first claim—just how deeply connected and identifiable is this African word to this British clothing brand in the first place? It's hard to draw some, if any, connections between the two which already disproves this word as a trademark, under its literal definition, crossing the threshold into cultural appropriation.

By trademarking the word "Yoruba," the company had attempted to claim a false sense of ownership over a name that holds deep cultural and linguistic significance to millions of people without any thought. This cannot be written off as just a case of branding as it is a prime example of how corporations exploit cultural identities for profit, often without giving back to the communities they take relentlessly from. While trademarks are meant to protect business identities, using the name of an entire ethnic group as a corporate asset denies it of its meaning and reduces it to just another marketable sticker. The issue goes beyond legality; it speaks to a broader pattern of cultural appropriation where Western companies devalue elements of non-western cultures without respect. If an African company had attempted the same thing, the backlash would be immediate, because as soon as the tables are turned, people begin to recognize the impropriety of such an action. This just further pushes the point of normalization of ethnic appropriation. This imbalance also reflects the lingering effects of colonialism, where power dynamics still allow dominant cultures to extract from marginalized ones without consequence which continues to be seen in modern day. More than anything, this case isn't just about trademarks; it reflects the wrongness surrounding the "ownership" of culture as they are

converted into profitable means, yet it remains obscured as these groups are left fighting to keep their identity from becoming another's brand.

Ultimately, after facing public fallout the British clothing store took back its trademark on "Yoruba" to avoid legal difficulties. However, this poses an important question: if they hadn't voluntarily withdrawn it, was there anything really stopping them legally from holding onto the trademark? Well, the answer is complicated, like most things. Under U.S. and U.K. trademark laws, a trademark can be challenged if it is deemed too generic, geographically descriptive, or if it falsely implies an association with a specific group. Falling under many of these categories, the Yoruba name clearly belongs to an ethnic group and a language, which could have been grounds for revocation if challenged. However, the legal system is not always ready to address cultural appropriation which meant it would have likely required an expensive legal battle between the Yoruba groups or Nigerian officials that are required to formally oppose it. Without such a challenge, the company could have kept the trademark, continuing to profit from a name tied to a living culture without accountability.

But we can't talk about modern advancements and adherents without revisiting our history. The Copyright Act of 1976 was made to automatically safeguard original works, but for black creators, enforcement has never been simple. The reality is that copyright battles favor those with the money and resources to fight them out which leaves many Black artists vulnerable to having their work stolen, readjusted, and profited from—many times without credit or pay. Black artists, writers, and filmmakers have time and time again seen their creative efforts co-opted by those with more influence and are more powerful. Look to the 2006 case of *Johnson v. Gordon*: a Black gospel singer who accused a white composer of stealing his music, but despite the obvious similarities, the court ruled against him on the grounds that there was

insufficient substantiality. Moreover, businesses such as Urban Outfitters have been sued repeatedly for trademarking and reselling Black cultural phrases, forcing their original black owners to pay huge sums of money in court to claim their *own* cultural work.

But even beyond the legal portion, systemic exploitation in industries such as music and entertainment has disproportionately stripped Black creators of their own intellectual property rights. There are several cases of unfair contracts, often signed under pressure or without proper legal precautionary discussion, which historically have left Black musicians, writers, and filmmakers without ownership of their creations. The music industry is particularly infamous for these practices with cases like Chuck D v. Universal Music Group (2019) that goes through record labels that profited from streaming and licensing while underpaying Black artists. A similar instance with Little Richard, a rock and roll icon, who spent decades fighting for royalties that were never properly given to him. Despite these controversies, these challenges linger today, demonstrating that even with legal protections in place, black creators still have to fight for fair recognition and compensation of their work.

This all ties together to prove one big point. First, that our historical background is ridden with these continuous failures regarding copyright, trademark, and intellectual property laws, allowing black art and culture to be mishandled. But primarily, it demonstrates how these values remain part of our justice system despite attempts to remove the bigger discriminatory portions, their micro aspects remain keen and often hinder the results of court cases on this very subjective law, relative to some of the more objective ones. Allowing this stagnancy to remain will only continue letting groups profit while original Black creators remain uncredited and uncompensated.

Works Cited

"Cariou v. Prince, No. 11-1197 (2d Cir. 2013)." n.d. Justia Law. https://law.justia.com/cases/federal/appellate-courts/ca2/11-1197/11-1197-2013-04-25.html.

"Johnson v. Gordon | Music Copyright Infringement Resource." 2019. Gwu.edu. 2019. https://blogs.law.gwu.edu/mcir/case/johnson-v-gordon/.

Morris, Chris. 2011. "Public Enemy's Chuck D Sues UMG." Variety. November 2, 2011. https://variety.com/2011/music/news/public-enemy-s-chuck-d-sues-umg-1118045494/.

Picheta, Rob. 2021. "British Fashion Brand Timbuktu Accused of 'Cultural Appropriation' for Trademarking 'Yoruba.'" CNN. May 24, 2021. https://www.cnn.com/2021/05/24/business/timbuktu-yoruba-trademark-scli-gbr-intl/index.html?utm_s.

Rufaro Samanga. 2021. "British Fashion House Disastrously Attempts to Trademark 'Yoruba.'" OkayAfrica. May 26, 2021. https://www.okayafrica.com/british-fashion-house-accused-of-cultural-appropriation/.

Solomon, Danyelle, Connor Maxwell, and Abril Castro. 2019. "Systematic Inequality and American Democracy." Center for American Progress. August 7, 2019. https://www.americanprogress.org/article/systematic-inequality-american-democracy/.

"Trademark Policy." n.d. Www.uspto.gov. https://www.uspto.gov/ip-policy/trademark-policy.

U.S. Copyright Office. 2022. "Copyright Law of the United States | U.S. Copyright Office." Copyright.gov. 2022. https://www.copyright.gov/title17/.

Walsh, Colleen. 2021. “Solving Racial Disparities in Policing.” Harvard Gazette. The Harvard Gazette. February 23, 2021. https://news.harvard.edu/gazette/story/2021/02/solving-racial-disparities-in-policing/.